

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel, W.A. DREW  
EDMONDSON, in his capacity as ATTORNEY  
GENERAL OF THE STATE OF OKLAHOMA,  
et al.,

Plaintiffs,

v.

Case No. 4:05-CV-329-TCK-SAJ

TYSON FOODS, INC., et al.,

Defendants.

**DEFENDANTS' RESPONSE IN OPPOSITION TO MOTION OF ANCIL MAGGARD  
FOR DISMISSAL, AND ALTERNATIVELY FOR SEVERANCE AND STAY,  
OF THE THIRD-PARTY COMPLAINT OF DEFENDANTS/THIRD-PARTY  
PLAINTIFFS, TYSON FOODS, INC., TYSON CHICKEN, INC.,  
COBB-VANTRESS, INC., PETERSON FARMS, INC., SIMMONS FOODS, INC.,  
GEORGES, INC., AND WILLOW BROOK FOODS, INC.**

COME NOW Defendants, Tyson Foods, Inc.; Tyson Poultry, Inc.; Tyson Chicken, Inc.; Cobb-Vantress, Inc.; Cal-Maine Foods, Inc.; Cal-Maine Farms, Inc.; George's, Inc.; George's Farms, Inc.; Peterson Farms, Inc.; Simmons Foods, Inc.; and Willow Brook Foods, Inc. (collectively, "Defendants"), and, by and through their respective attorneys, hereby submit the following *Response in Opposition to the Motion of Ancil Maggard for Dismissal, and Alternately for Severance and Stay, of the Third Party Complaint of Defendants/Third-Party Plaintiffs, Tyson Foods, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., Peterson Farms, Inc., Simmons Foods, Inc., George's, Inc., and Willow Brook Foods, Inc.* (the "Motion") (Docket No. 591).

**I. ARGUMENT**

1. Third Party Defendant Ancil Maggard ("Mr. Maggard") has moved this Court to dismiss Defendants' Third Party Complaint ("TPC") or, in the alternative, to sever and stay the

proceedings of the TPC until “resolution” of Plaintiffs’ asserted claims against Defendants. *See Motion* at ¶ 2.

2. Mr. Maggard provides no original argument in support of his *Motion* and instead, adopts the arguments set forth in the Brief (Docket No. 589) submitted in support of the *Motion of the Berry Group of Third-Party Defendants for Dismissal, and Alternatively for Severance and Stay of the Third-Party Complaint of Defendants/Third-Party Plaintiffs, Tyson Foods, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., Peterson Farms, Inc., Simmons Foods, Inc., Georges, Inc., and Willow Brook Foods, Inc.* (Docket No. 588) (the “*Berry Group Motion*”).

3. As support for its *Motion*, the Berry Group adopted Plaintiffs’ *Motion to Sever and Stay and/or Strike or Dismiss the Claims Asserted in the Third-Party Complaints* (“*Plaintiffs’ Motion*”) and the Plaintiffs’ reply brief and errata thereto. *See Berry Group Motion* at 2, referencing Plaintiffs’ pleadings at Docket Nos. 247, 584, and 586.

4. Because Mr. Maggard’s *Motion* is premised solely upon the arguments set forth in the *Berry Group Motion* and supporting Brief (Docket Nos. 588 and 589, respectively), which, in turn, adopted and incorporated the *Plaintiffs’ Motion*, Defendants hereby submit their response in opposition to Mr. Maggard’s *Motion* by incorporating, by reference, their respective *Responses* to the *Plaintiffs’ Motion* (Docket No. 495) and to the *Berry Group Motion* (Docket No. 775), the same as if fully set forth herein.

## II. CONCLUSION

For the reasons identified in Defendants’ *Responses to Plaintiffs’ Motion* (Docket No. 495) and to the *Berry Group Motion* (Docket No. 775), this Court should deny Mr. Maggard’s *Motion* as premature, legally deficient, and unsupported by considerations of the relevant equities and efficiencies.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of June, 2006, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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